

FILED

AUG 29 2019

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

**CLERK, U.S. BANKRUPTCY COURT
WEST DIST. OF PENNSYLVANIA**

IN RE: ONEJET, INC., Debtor. ROSEMARY C. CRAWFORD, Chapter 7 Trustee, Movant, NO RESPONDENT.	Bankruptcy No. 18-24070-GLT Chapter 7 Related to Dkt. No. 220 Hearing: August 29, 2019 at 10:30 a.m.
--	---

**ORDER APPROVING (I) BIDDING PROCEDURES FOR THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTOR'S INTELLECTUAL PROPERTY AND (II)
FORM AND MANNER OF SALE NOTICE**

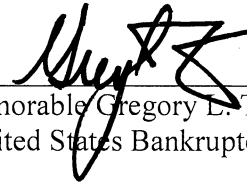
AND NOW, to wit, this 29th day of August 2019, after notice and opportunity for hearing, the Court having considered of *Motion for Entry of an Order Approving (I) Bidding Procedures for the Sale of Substantially All IP Assets and (II) Form and Manner of Sale Notice* ("Bid Procedures Motion"), filed by Rosemary C. Crawford (the "Trustee"), the chapter 7 trustee for the estate of OneJet, Inc., it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

1. The Bid Procedures Motion is approved.
2. The Sale Notice attached as **Exhibit A** is approved.
3. Pursuant to the Bid Procedures, each Qualified Bidder (as defined in the Bid Procedures) shall be invited to participate in an auction (the "Auction Sale") at the law firm of Bernstein-Burkley, P.C., 707 Grant Street, Suite 2200 Gulf Tower, Pittsburgh, PA 15219, which shall commence at TBD (prevailing Eastern Time) on December 3, 2019.
4. The following bidding procedures shall govern the Auction Sale:

- a. Solicitation Process; Distribution of Bidding Procedures. The Trustee shall distribute (i) the Sale Notice and (ii) these Bidding Procedures (as approved by the Court) as required in connection with the Bid Procedures Motion and as set forth in the notice procedures below. Further, the Trustee shall distribute the Sale Motion and the Bidding Procedures to those parties the Trustee determines may have or demonstrate an interest in acquiring the IP Assets.
- b. Potential Bidders; Due Diligence. The Trustee shall afford each potential bidder due diligence access to the IP Assets, through the Bid Deadline (as defined herein).
- c. Qualified Bidders; Qualified Bids. In order to be eligible to bid on the IP Assets at the sale confirmation hearing, each bidder must be a "Qualified Bidder," which is a bidder that has submitted a Qualified Competing Bid (as defined herein). Within three (3) business days after the Trustee receives from a potential bidder all of the materials required to be submitted pursuant to subparagraph (d)(i) below, the Trustee shall make an initial determination, subject to final review, consideration and determination by the Court, if necessary, whether a potential bidder is a Qualified Bidder and has submitted a Qualified Bid (as defined herein). After such initial determination is made, and by the end of the third business day following receipt of the potential bid, the Trustee will notify the potential bidder of the decision
- d. Submission of Bid. Unless otherwise agreed upon by the Trustee, in order to be considered for status as a Qualified Bidder, a bidder must:
 - i. Deliver to the Sales Agent (Peter Hartheimer, 3945 Freedom Circle, Suite 560, Santa Clara, CA 95054 (email: p.hartheimer@sherwoodpartners.com) so as to be received not later than 4:00 p.m. prevailing Eastern time on TBD, ("Bid Deadline") which is seven (7) days prior to the scheduled date for the auction ("Auction Sale") on the proposed sale of the IP Assets, a written offer for the IP Assets at a price equal or exceeding the Minimum Initial Bid (as defined below) and accompanied by the following ("Qualified Bid"):
 1. Proof, in a form satisfactory to the Trustee, of the bidder's financial ability to consummate its offer to purchase the IP Assets;
 2. To the Trustee's satisfaction, (i) fully disclose the identity of each individual or entity that will be bidding for the IP Assets or otherwise participating in connection with the transaction, and (ii) the terms of any such participation, and if an entity has been formed for the purpose of acquiring the IP Assets, the parties that will bear liability for any breach of such entity;

3. An earnest money deposit of \$100,000.00 ("Qualified Bidder Deposit") by cashier's or certified check (made payable to the Trustee and to be held by Trustee's counsel) or wire transfer of immediately available funds;
 4. A written acknowledgement by such Qualified Bidder that it agrees to the terms of the Bidding Procedures and that such Qualified Bidder agrees to be a Back-Up Bidder (as defined below); and
 5. An executed copy of the Asset Purchase Agreement substantially in the form attached hereto as Exhibit B, with any proposed changes clearly set forth in redlined format.
- ii. Submit a bid in the minimum amount of \$250,000.00, ("Minimum Initial Bid") to be considered.
 - iii. Not request and waive any claim of the Qualified Bidder to any Expense Payment, or similar type of payment.
- e. Denial of "Qualified Bidder" Status to Non-Conforming Bids. Subject to final determination by the Court, if necessary, at the Trustee's discretion, the Trustee may decline to accept as Qualified Bids any bids that do not substantially conform to the foregoing requirements and any other procedures set forth in the bidding procedures order. The Trustee shall have the right to negotiate with any bidder with respect to clarification or enhancement of any bid.
 - f. Bid Deadline; Reporting of Qualified Competing Bids. All Qualified Competing Bids must be submitted to the Trustee so as to be received not later than the Bid Deadline. A bid submitted after the Bid Deadline or that is not a Qualified Bid will be considered and allowed per the discretion of the trustee, or an order of the Bankruptcy Court is entered directing that such bid be considered, and neither the Trustee nor any other person will have any obligation to seek such an order from the Bankruptcy Court.
 - g. Participation in Auction; Successful Bidder. Within the discretion of the Trustee and the Sales Agent, Qualified Bidders may attend and bid by telephone. Only a Qualified Bidder that has submitted a Qualified Bid(s) will be eligible to participate in the Auction Sale. The bidding at the Auction Sale shall start at the Minimum Initial Bid. At the Auction Sale competing Qualified Bidders may submit bids for the IP Assets in excess of the Minimum Initial Bid, provided that such Minimum Overbid is \$50,000.00 and subsequent bids are (i) in increments of at least \$10,000.00. At the conclusion of the Auction Sale, or as soon thereafter, the Trustee shall determine the highest and best Qualified Bid ("Successful Bid") from the Qualified Bidders (the "Successful Bidder").

- h. Sale Confirmation Hearing. Within five (5) days following the conclusion of the Auction Sale, the Trustee shall file a motion requesting sale confirmation order (the "Motion to Confirm Sale"). The Court shall schedule a hearing on Motion to Confirm Sale (the "Sale Confirmation Hearing") following the consummation of the Auction Sale.
 - i. Loss of Deposit. If the failure by the Successful Bidder to consummate the purchase is the result of such Successful Bidder's breach of, or default or failure to perform under any Successful Bidder sale documents or the terms of these Bidding Procedures (such bidder being a "Defaulting Bidder"), such Defaulting Bidder's Qualified Bidder Deposit shall be forfeited to the Trustee and the Trustee shall thereupon have the right to assert all rights and remedies provided under applicable law, including but not limited to, specific performance.
 - j. Return of Deposit. Except as provided herein, all deposits shall be returned to each bidder not determined by the Trustee at the Auction Sale as the Successful Bidder no later than five (5) business days following the substantial consummation of the sale to the Successful Bidder or any Back-up Bidder (as defined below).
 - k. Back-Up Bidder. If an Auction Sale is conducted, any party that submits a Qualified Bid agrees to serve as a back-up bidder ("Back-Up Bidder") and keep such bid open and irrevocable until the closing of the Sale transaction with the Successful Bidder. The Back-Up Bidder's deposit will be returned by no later than the fifth (5th) business day after the closing of the Sale transaction with the Successful Bidder. Following the Sale Confirmation Hearing, if the Successful Bidder fails to consummate an approved Sale because of (a) the failure of a condition precedent beyond the control of either the Trustee or the Successful Bidder or (b) a breach or failure to perform on the part of such Successful Bidder, the next highest Back-Up Bidder will be deemed to be the new Successful Bidder, and the Trustee will be authorized to consummate the Sale with such Back-Up Bidder(s) without further Court order. If the sale is not concluded with a Successful Bidder, and there are no remaining Back-Up Bidders to consummate the sale of the IP Assets, the Trustee shall notify the Court and the Court shall take such further action as it deems proper.
5. The Court reserves the right to enter any other Order or Orders as it deems appropriate associated with the Bid Procedures Motion.


Honorable Gregory L. Taddonio
United States Bankruptcy Court

Movant shall serve a copy of this Order on the respondents, their counsel, the Trustee, and the US trustee. Movant shall file a Certificate of Service within (3) business days.